

AMENDED IN ASSEMBLY APRIL 23, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2867

Introduced by Assembly Member Kehoe

February 25, 2002

~~An act to amend Sections 53091, 53094, 65352.2, and 65588 of the Government Code, and to amend Section 50675.7 of the Health and Safety Code, relating to planning and zoning.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2867, as amended, Kehoe. Planning and zoning: schools.

~~(1) Existing law requires each local agency to comply with all applicable building ordinances and zoning ordinances of the county or city in which the territory of the local agency is situated.~~

~~This bill would also require the local agency to comply with the general plan of the county or city.~~

~~(2) Existing law authorizes a school district to render a city or county zoning ordinance inapplicable to a proposed use of property by the district, subject to compliance with specified requirements.~~

~~This bill would require the school district to take that action at a noticed public hearing, at which the district determines that there is no feasible alternative to its proposal, as specified. The bill would also revise criteria for judicial review of that action.~~

~~(3) Existing law prescribes issues that the parties may consider at a meeting that may be requested before the governing board of a school district adopts a school facility needs analysis, master plan, or other long-range plan.~~

~~This bill would require the parties to consider those issues, and would, if the school facilities needs analysis indicates that demolition, conversion, or any other change of use of existing residential units may be necessary, include in the list of issues, compliance with provisions of law requiring relocation assistance and the maintenance of sites to accommodate regional housing needs. The bill would also require a city or county to review its housing element within 45 days of notice of the preparation of such a long-range plan and, if necessary, amend the housing element. The bill would create a state-mandated local program by imposing new duties on cities, counties, and school districts.~~

~~(4) The~~

The existing Multifamily Housing Program authorizes the Department of Housing and Community Development to make loans to pay for the eligible costs of development pursuant to a project selection process established by the department. The department may establish alternate project selection processes for funds appropriated for special purposes tied to specified needs and objectives.

This bill would specify that those specified needs and objectives include replacement of affordable housing demolished or converted to nonresidential uses by school districts.

~~(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes *no*.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 53091 of the Government Code is~~
- 2 ~~amended to read:~~
- 3 ~~53091. (a) Each local agency shall comply with all~~
- 4 ~~applicable building ordinances, zoning ordinances, and the~~

1 ~~general plan of the county or city in which the territory of the local~~
2 ~~agency is situated.~~

3 ~~(b) On projects for which state school building aid is requested~~
4 ~~by a local agency for construction of school facilities, the county~~
5 ~~or city planning commission in which the agency is located shall~~
6 ~~consider in its review for approval information relating to~~
7 ~~attendance area enrollment, adequacy of the site upon which the~~
8 ~~construction is proposed, safety features of the site and proposed~~
9 ~~construction, and present and future land utilization, and report~~
10 ~~thereon to the State Allocation Board. If the local agency is~~
11 ~~situated in more than one city or county or partly in a city and partly~~
12 ~~in a county, the local agency shall comply with the ordinances and~~
13 ~~general plans of each county or city with respect to the territory of~~
14 ~~the local agency which is situated in the particular county or city,~~
15 ~~and the ordinances and general plan of a county or city shall not~~
16 ~~be applied to any portion of the territory of the local agency that~~
17 ~~is situated outside the boundaries of the county or city.~~
18 ~~Notwithstanding the preceding provisions of this section, this~~
19 ~~section does not require a school district or the state when acting~~
20 ~~under the State Contract Act (Article 1 (commencing with Section~~
21 ~~10100) of Chapter 1 of Part 2 of Division 2 of the Public Contract~~
22 ~~Code) to comply with the building ordinances of a county or city.~~

23 ~~(c) Each local agency required to comply with building~~
24 ~~ordinances, zoning ordinances, and general plans pursuant to this~~
25 ~~section and each school district whose school buildings are~~
26 ~~inspected by a county or city pursuant to Section 53092 shall be~~
27 ~~subject to the applicable ordinances of a county or city requiring~~
28 ~~the payment of fees, but the amount of those fees charged to a local~~
29 ~~agency or school district shall not exceed the amount charged~~
30 ~~under the ordinance to nongovernmental agencies for the same~~
31 ~~services or permits. Building ordinances of a county or city shall~~
32 ~~not apply to the location or construction of facilities for the~~
33 ~~production, generation, storage, or transmission of water,~~
34 ~~wastewater, or electrical energy by a local agency.~~

35 ~~(d) Zoning ordinances of a county or city shall not apply to the~~
36 ~~location or construction of facilities for the production,~~
37 ~~generation, storage, or transmission of water, or for the production~~
38 ~~or generation of electrical energy, nor to facilities that are subject~~
39 ~~to Section 12808.5 of the Public Utilities Code, nor to electrical~~
40 ~~substations in an electrical transmission system that receives~~

1 electricity at less than 100,000 volts. Zoning ordinances of a
2 county or city shall apply to the location or construction of
3 facilities for the storage or transmission of electrical energy by a
4 local agency, if the zoning ordinances make provision for those
5 facilities.

6 SEC. 2. Section 53094 of the Government Code is amended
7 to read:

8 53094. (a) Notwithstanding any other provision of this
9 article, this article does not require a school district to comply with
10 the zoning ordinances of a county or city unless the zoning
11 ordinance makes provision for the location of public schools and
12 unless the city or county has adopted a general plan.

13 (b) Notwithstanding subdivision (a), the governing board of a
14 school district that has complied with the requirements of Section
15 65352.2 of this code and Section 21151.2 of the Public Resources
16 Code, by a vote of two-thirds of its members, may render a city or
17 county zoning ordinance inapplicable to a proposed use of
18 property by the school district if the district, at a noticed public
19 hearing, determines by resolution that there is no feasible
20 alternative to its proposal. Mailed notice of the public hearing shall
21 be provided at least 10 days prior to the hearing to the owners of
22 all property within 300 feet of the location of the proposed facility,
23 and a notice shall be posted in a conspicuous place at the proposed
24 site of the facility. The governing board of the school district may
25 not take this action when the proposed use of the property by the
26 school district is for nonclassroom facilities, including, but not
27 limited to, warehouses, administrative buildings, and automotive
28 storage and repair buildings.

29 (c) The governing board of the school district shall, within 10
30 days, notify the city or county concerned of any action taken
31 pursuant to subdivision (b). If the governing board has taken such
32 an action, the city or county may commence an action in the
33 superior court of the county whose zoning ordinance is involved
34 or in which is situated the city whose zoning ordinance is involved,
35 seeking a review of the action of the governing board of the school
36 district to determine whether it was supported by substantial
37 evidence. The city or county shall cause a copy of the complaint
38 to be served on the board. The evidence before the court shall
39 include the record of the proceedings before the city, county, and
40 district. If the court determines that the action was not supported

1 ~~by substantial evidence, it shall declare it to be of no force and~~
2 ~~effect, and the zoning ordinance in question shall be applicable to~~
3 ~~the use of the property by the school district.~~

4 (d) “Feasible,” as used in this section, means capable of being
5 accomplished in a successful manner within a reasonable period
6 of time, taking into account economic, environmental, social, and
7 technological factors and the necessity of ensuring that the cities,
8 counties, or cities and counties maintain adequate sites to
9 accommodate the regional need for housing for all income levels
10 as required by Sections 65583, 65584, and 65913.1.

11 SEC. 3. ~~Section 65352.2 of the Government Code is amended~~
12 ~~to read:~~

13 ~~65352.2. (a) It is the intent of the Legislature in enacting this~~
14 ~~section to foster improved communication and coordination~~
15 ~~between cities, counties, and school districts related to planning~~
16 ~~for school siting.~~

17 (b) ~~Following notification by a local planning agency pursuant~~
18 ~~to paragraph (2) of subdivision (a) of Section 65352, the governing~~
19 ~~board of any elementary, high school, or unified school district, in~~
20 ~~addition to any comments submitted, may request a meeting with~~
21 ~~the planning agency to discuss possible methods of coordinating~~
22 ~~planning, design, and construction of new school facilities and~~
23 ~~school sites in coordination with the existing or planned~~
24 ~~infrastructure, general plan, and zoning designations of the city~~
25 ~~and county in accordance with subdivision (d). If a meeting is~~
26 ~~requested, the planning agency shall meet with the school district~~
27 ~~within 15 days following notification.~~

28 (c) ~~At least 45 days prior to completion of a school facility~~
29 ~~needs analysis pursuant to Section 65995.6, a master plan pursuant~~
30 ~~to Sections 16011 and 16322 of the Education Code, or other long~~
31 ~~range plan, that relates to the potential expansion of existing school~~
32 ~~sites or the necessity to acquire additional school sites, the~~
33 ~~governing board of any school district shall notify and provide~~
34 ~~copies of any relevant and available information, master plan, or~~
35 ~~other long range plan, including, if available, any proposed school~~
36 ~~facility needs analysis, that relates to the potential expansion of~~
37 ~~existing school sites or the necessity to acquire additional school~~
38 ~~sites, to the planning commission or agency of the city or county~~
39 ~~with land use jurisdiction within the school district. Following~~
40 ~~notification, or at any other time, the affected city or county may~~

~~request a meeting in accordance with subdivision (d). If a meeting is requested, the school district shall meet with the city or county within 15 days following notification. After providing the information specified in this section within the 45-day time period specified in this subdivision, the governing board of the affected school district may complete the affected school facility needs analysis, master plan, or other long-range plan without further delay.~~

~~(d) At any meeting requested pursuant to subdivision (b) or (c) the parties shall review and consider, but are not limited to, the following issues:~~

~~(1) Methods of coordinating planning, design, and construction of new school facilities and school sites in coordination with the existing or planned infrastructure, general plan, and zoning designations of the city and county.~~

~~(2) Options for the siting of new schools and whether or not the local city or counties existing land use element appropriately reflects the demand for public school facilities, and ensures that new planned development reserves location for public schools in the most appropriate locations.~~

~~(3) Methods of maximizing the safety of persons traveling to and from school sites.~~

~~(4) Opportunities to coordinate the potential siting of new schools in coordination with existing or proposed community revitalization efforts by the city or county.~~

~~(5) Opportunities for financial assistance which the local government may make available to assist the school district with site acquisition, planning, or preparation costs.~~

~~(6) Review all possible methods of coordinating planning, design, and construction of new school facilities and school sites or major additions to existing school facilities and recreation and park facilities and programs in the community.~~

~~(7) If the school facilities needs analysis indicates that demolition, conversion, or any other change of use of existing residential units may be necessary, (A) the district's means of ensuring compliance with the planning and relocation assistance requirements in Chapter 16 (commencing with Section 7260) of Division 7 of Title 1, and (B) ensuring that the cities or counties or cities and counties maintain adequate sites to accommodate the~~

1 ~~regional need for housing for all income levels as required by~~
2 ~~Sections 65583, 65584, and 65913.1.~~

3 ~~SEC. 4. Section 65588 of the Government Code is amended~~
4 ~~to read:~~

5 ~~65588. (a) Each local government shall review its housing~~
6 ~~element as frequently as appropriate to evaluate all of the~~
7 ~~following:~~

8 ~~(1) The appropriateness of the housing goals, objectives, and~~
9 ~~policies in contributing to the attainment of the state housing goal.~~

10 ~~(2) The effectiveness of the housing element in attainment of~~
11 ~~the community's housing goals and objectives.~~

12 ~~(3) The progress of the city, county, or city and county in~~
13 ~~implementation of the housing element.~~

14 ~~(b) The housing element shall be revised as appropriate, but not~~
15 ~~less than every five years, to reflect the results of this periodic~~
16 ~~review.~~

17 ~~(c) The review and revision of housing elements required by~~
18 ~~this section shall take into account any low- or moderate-income~~
19 ~~housing provided or required pursuant to Section 65590.~~

20 ~~(d) The review pursuant to subdivision (c) shall include, but~~
21 ~~need not be limited to, the following:~~

22 ~~(1) The number of new housing units approved for~~
23 ~~construction within the coastal zone after January 1, 1982.~~

24 ~~(2) The number of housing units for persons and families of~~
25 ~~low or moderate income, as defined in Section 50093 of the Health~~
26 ~~and Safety Code, required to be provided in new housing~~
27 ~~developments either within the coastal zone or within three miles~~
28 ~~of the coastal zone pursuant to Section 65590.~~

29 ~~(3) The number of existing residential dwelling units occupied~~
30 ~~by persons and families of low or moderate income, as defined in~~
31 ~~Section 50093 of the Health and Safety Code, that have been~~
32 ~~authorized to be demolished or converted since January 1, 1982,~~
33 ~~in the coastal zone.~~

34 ~~(4) The number of residential dwelling units for persons and~~
35 ~~families of low or moderate income, as defined in Section 50093~~
36 ~~of the Health and Safety Code, that have been required for~~
37 ~~replacement or authorized to be converted or demolished as~~
38 ~~identified in paragraph (3). The location of the replacement units,~~
39 ~~either onsite, elsewhere within the locality's jurisdiction within the~~

1 coastal zone, or within three miles of the coastal zone within the
2 locality's jurisdiction, shall be designated in the review.

3 ~~(c) Notwithstanding subdivision (b) or the date of adoption of~~
4 ~~the housing elements previously in existence, the dates of revisions~~
5 ~~for the housing element shall be modified as follows:~~

6 ~~(1) Local governments within the regional jurisdiction of the~~
7 ~~Southern California Association of Governments: December 31,~~
8 ~~2000, for the third revision, and June 30, 2005, for the fourth~~
9 ~~revision.~~

10 ~~(2) Local governments within the regional jurisdiction of the~~
11 ~~Association of Bay Area Governments: December 31, 2001, for~~
12 ~~the third revision, and June 30, 2006, for the fourth revision.~~

13 ~~(3) Local governments within the regional jurisdiction of the~~
14 ~~Council of Fresno County Governments, the Kern County Council~~
15 ~~of Governments, and the Sacramento Area Council of~~
16 ~~Governments: June 30, 2002, for the third revision, and June 30,~~
17 ~~2007, for the fourth revision.~~

18 ~~(4) Local governments within the regional jurisdiction of the~~
19 ~~Association of Monterey Bay Area Governments: December 31,~~
20 ~~2002, for the third revision, and June 30, 2007, for the fourth~~
21 ~~revision.~~

22 ~~(5) Local governments within the regional jurisdiction of the~~
23 ~~San Diego Association of Governments: December 31, 1999, for~~
24 ~~the third revision cycle ending June 30, 1999, and June 30, 2004,~~
25 ~~for the fourth revision.~~

26 ~~(6) All other local governments: December 31, 2003, for the~~
27 ~~third revision, and June 30, 2008, for the fourth revision.~~

28 ~~(7) Subsequent revisions shall be completed not less often than~~
29 ~~at five-year intervals following the fourth revision.~~

30 ~~(f) Upon receiving notice pursuant to Section 65352.2 of the~~
31 ~~preparation of a school facility needs analysis pursuant to Section~~
32 ~~65995.6, a master plan pursuant to Sections 16011 and 16322 of~~
33 ~~the Education Code, or other long-range plan, that relates to the~~
34 ~~potential expansion of existing schoolsites or the necessity to~~
35 ~~acquire additional schoolsites, a local government shall review its~~
36 ~~housing element within 45 days and determine whether the~~
37 ~~expansion or acquisition of schoolsites will (1) eliminate any sites~~
38 ~~identified as available for the development of housing pursuant to~~
39 ~~paragraph (1) of subdivision (c) of Section 65583, or (2) increase~~
40 ~~the need for housing affordable to very low, low or~~

~~moderate-income households determined pursuant to paragraph (1) of subdivision (a) of Section 65583. If identified sites will be eliminated or the need for affordable housing will be increased, the local government shall amend its housing element to identify additional appropriate and available sites to replace the eliminated sites and accommodate the increased need prior to the removal of the sites and the displacement of any occupants of any housing units to be demolished or converted to other uses as part of the expansion or acquisition of school sites.~~

SEC. 5.—

SECTION 1. Section 50675.7 of the Health and Safety Code is amended to read:

50675.7. Loans shall be provided using a project selection process established by the department that meets all of the following requirements:

(a) To the extent feasible, this process shall be coordinated with the processes of other major housing funding sources, including that of the California Tax Credit Allocation Committee, and shall ensure a reasonable geographic distribution of funds.

(b) The process shall require that applications for projects meet minimum threshold requirements, including, but not limited to, all of the following:

(1) The proposed project shall be located within reasonable proximity to public transportation and services.

(2) Development costs for the proposed project shall be reasonable compared to costs of comparable projects in the local area.

(3) The proposed project shall be feasible.

(4) The sponsor shall have the capacity to own and develop the proposed project.

(c) Projects that meet threshold requirements shall be evaluated for funding based on weighted underwriting and evaluative criteria that give consideration to projects that meet the following criteria:

(1) Serve households at the lowest income levels, consistent with long-term feasibility, considering regional variations.

(2) Address the most serious identified local housing needs.

(3) Will be developed and owned by entities with substantial and successful experience.

1 (4) Contain a significant percentage of units for families or
2 special needs populations.

3 (5) Leverage other funds in those jurisdictions where they are
4 available.

5 (d) The department may establish alternate project selection
6 processes, threshold requirements, and priorities for funds
7 appropriated for special purposes. These alternate processes,
8 requirements, and priorities shall be tied to the specific needs and
9 objectives for which the funds have been appropriated, including
10 replacement of affordable housing demolished or converted to
11 nonresidential uses by school districts.

12 (e) Loans for rental housing developments and transitional
13 housing may be reviewed, approved, and funded by the
14 department directly to the sponsor. The department shall ensure
15 that the sponsor notifies the local legislative body of the sponsor's
16 loan application prior to application submission.

17 (f) The department may make grants to local public entities
18 using funds reserved by the Legislature for rehabilitation, or
19 acquisition and rehabilitation, in support of code enforcement.
20 The local entities shall then make the funds available as loans, and
21 they may be allowed to collect and retain loan repayments,
22 provided that these repayments are reloaned in accordance with
23 the requirements of this chapter, as it relates to funds used in
24 support of code enforcement.

25 ~~SEC. 6. Notwithstanding Section 17610 of the Government~~
26 ~~Code, if the Commission on State Mandates determines that this~~
27 ~~act contains costs mandated by the state, reimbursement to local~~
28 ~~agencies and school districts for those costs shall be made pursuant~~
29 ~~to Part 7 (commencing with Section 17500) of Division 4 of Title~~
30 ~~2 of the Government Code. If the statewide cost of the claim for~~
31 ~~reimbursement does not exceed one million dollars (\$1,000,000),~~
32 ~~reimbursement shall be made from the State Mandates Claims~~
33 ~~Fund.~~